LEMBAGA KEMAJUAN TANAH PERSEKUTUAN

v.

MAT AKHIR BAKAR & ORS.

HIGH COURT MALAYA, MUAR
RICHARD TALALLA JC
[CIVIL APPEAL NO. 16-4 OF 1988]
18 JULY 1990

STATUTORY INTERPRETATION: *Whether carrying on trade or business - Principal - Employees - Sections 33(1), 60 Employment Act 1955.*

The respondent (M and others) had commenced proceedings against the appellant (Felda) under s. 70 of the Employment Act 1955 (the Act) and on 11 January 1981, the Assistant Director of Labour (AD), made an order requiring the appellant to pay the wages of 94 workers. Felda appeals against that order mainly on the ground that since it, Felda does not carry on a trade or business, the provisions of s. 33(1) of the Act are inapplicable against it as it was not a principal and the respondents were not its employees. The AD had held that Felda did not carry on a trade but that it does carry on a business.

Felda also contended that the work done by the respondents was not undertaken by Felda and therefore, argued that s. 33 of the Act was applicable; furthermore Felda argued that there was no evidence upon which the AD was able to make the award and that s. 32 of the Evidence Act 1950 was not complied with.

Held:

[1] The appellant, in carrying out the statutory obligations imposed upon it by the Ordinance, was at all material times conducting a business within the meaning of s. 33(1) of the Act, a *fortiori* as the Ordinance itself in s. 60 speaks to business, the appellant is required to transact in the execution of its duties followed by the testimony of the administrator to the effect that the main business of the appellant was to develop land and give it to the landless.

[2] On the evidence adduced before the learned Director and by reference to the statutory objects of Felda as contained in the Act and as conceded by Counsel for the appellant in his written submission, it is clear that the work done by the respondents under the contract, did constitute work undertaken by the appellant as principal, the work undertaken being work which under the Act the appellant was statutorily bound to carry out.

[3] In the face of the admission of the claim by the defaulting contractor without any comment from Felda, and the failure of Felda to take up the offer of all the workers for cross-examination and the failure of Felda to express a wish about examining the other complainants, the complaint by Felda as to the lack of evidence presented to the AD was wholly untenable.

[4] The appellant's complaint that the respondents had not proved their claim by having recourse to salary books and compliance with s. 32 of the Evidence Act appeared to be baseless in view of the clear admission of liability made by the contractor in the presence of the appellant's representative who made no objection thereto.

[Appeal dismissed.]

Cases referred to:
Grainger & Son v. William Lane Gough [1896] AC 325
Aviation and Shipping Co. Ltd. v. Murray (Inspector of Taxes) [1961] 2 All ER 805
Re Pszon [1946] 2 DLR 307
Re A Debtor [1927] 1 Ch 97
Rolls v. Miller [1884] 27 Ch D 71
Skates v. Jones and Co. [1910] 26 TLR 643
Hockley v. West London Timber and Joinery Company [1914] 3 KB 1013
Soon Peng Siong v. Sin Yuh Miaw [1960] 26 MLJ 299
Syarikat Jenka Sdn. Bhd. v. Abdul Rashid bin Harun [1981] 1 MLJ 201

Legislation referred to:
Employment Act 1955, 33(1), ss. 70
Evidence Act 1950, s. 32
Land Development Ordinance 1956, ss. 3(1), 22
Workmen's Compensation Ordinance (Cap 157) [Sing], s. 19(1)

For the appellant - S. Kulasegaran; M/s. Ranjit, Thomas & Kula
For the 1st respondent - in person

JUDGMENT

Richard Talalla JC:

This is an appeal against the order of the learned Assistant Director of Labour Segamat (the director) made on 11 January 1981 against the appellant requiring the latter to pay the wages of 94 workers. The order was made in proceedings commenced under s. 70 of the Employment Act 1955 (the Act) by Mat Akhir bin Bakar and 172 others against the appellant.

The appellant's main grounds of appeal centre around s. 33(1) of the Act which subsection, other than its proviso which does not apply here, is as follows:

> (1) Where a principal in the course of or for the purposes of his trade or business, contracts with a contractor for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, and any wages are due to any employee by the contractor or any sub-contractor under the contractor for work done in the course of the performance of the contract, the principal and the contractor and any such sub-contractor (not being the employer) shall be jointly and severally liable with the employer to pay such wages as if that employee had been immediately employed by the principal and by the contractor and any such sub-contractor:

The appellant claims as its first ground that it does not carry on a trade or business and consequently the provisions of s. 33(1) of the Act cannot apply against it, the appellant not being a principal and the respondents not being employees of the appellant.

The appellant is an entity established under s. 3(1) of the Land Development Ordinance 1956 (the Ordinance). The appellant is known as the Federal Land Development Authority and popularly referred to as Felda. I shall hereafter refer to it by its popular name.

The Ordinance as expressly stated in its preamble is an Ordinance to provide for the establishment of a Federal development authority and local development boards to promote and carry out projects for land development and settlement, for making funds available therefore, and for purposes connected therewith. Its duty is laid down in s. 3(2), namely to promote and assist the investigation, formulation and carrying out of

projects for the development and settlement of land in the Federation. By virtue of s. 15(1) Felda is a body corporate having perpetual succession with a right to sue and a liability to be sued. Pursuant to subsection (2) of that section Felda consists of a chairman and between 6 to 8 members. The Chairman is the General Manager of the undertaking of Felda and is required to exercise supervision and control over the acts and proceedings of all its officers and servants in matters of executive administration and concerning its accounts and records and subject to certain regulations is charged with the disposal of all questions. See s. 21. Section 22 of the Ordinance empowers Felda from time to time to appoint and employ such officers and servants as may be necessary, in the opinion of the authority for the purposes of the Ordinance. Pursuant to s. 60 Felda is empowered to employ and pay agents and technical advisers whether advocates and solicitors, bankers, stockbrokers, surveyors or valuers or other persons, to transact any business or to do any act required to be transacted or done in the execution of the duties of the authority. It is significant that the word "business" is used in s. 60.

At the hearing before the director, Felda was represented by its Assistant Administrator one En. Ayub bin Mohamed (the Administrator) who testified as follows:

> Felda was established under a law with the sole purpose of land development. It was set up by the Government to develop land for the people. It was not set up for the purpose of profit making. Its main business was to develop land and to give it to the landless. Felda did undertake land development in Keratong 1 and Keratong 9. In connection with the land development, Felda did give a contract work to Aziz bin Adom in Keratong 1 and to Zahwa @ Zahri bin Yahya in Keratong 9 in assisted pollination work.

Here again it is significant that the witness used the word "business" in regard to Felda's statutory duty.

In his written submission Counsel for the appellant conceded that Felda was established to develop land for the landless, that it develops land allocated by the respective State Governments into rubber, oil palm and cocoa estates and the settlers are moved in about 2 to 3 years after planting the crops, and that the felling of the jungle and the clearing of the land is undertaken by contractors whose trade or business it is and who had successfully bid by tender.

The director found that Felda is not an entity that carries on a trade. To my mind he was right in so finding. See the case of *Grainger & Son v. William Lane Gough* [1896] AC 325 at p. 345 where Lord Davey said:

> Now, what does one mean by a trade, or the exercise of a trade? Trade in its largest sense is the business of selling, with a view to profit, goods which the trader has either manufactured or himself purchased.

There is also the case of *Aviation and Shipping Co. Ltd. v. Murray (Inspector of Taxes)* [1961] 2 All ER 805 where at p. 811 Donovan LJ said:

> A trade is an organised seeking after profits,

The director did find that Felda does carry on a business. He said:

> Although Felda was not established for the purposes of gain, it cannot be deemed to have a trade but nevertheless it certainly has a business, which is to ensure that the land development schemes it undertakes are completed successfully. Therefore in my opinion Felda has a business and consequently comes within the ambit of s. 33 of the Employment

> Act 1955, which was enacted to protect the interest of the workers employed by or through contractors. Although Felda has a responsibility and obligation towards the Government and the settlers, it has no less obligation and responsibility towards the contractors' workers, who were the very people to make the schemes successful and viable, in ensuring that its contractors settled the workers' wages on time.

Again I think that he was right.

Counsel for the appellant placed reliance on the dictum of Laidlaw JA in *Re Pszon* [1946] 2 DLR 307 at p. 311 where the learned Judge said:

> The word "business" is of wider import than "trade": *Re A Debtor*, [1927] 1 Ch. 97 at p. 105. As used in various statutes it involves at least three elements: (1) the occupation of time, attention and labour; (2) the incurring of liabilities to other persons; and (3) the purpose of a livelihood or profit. A person who devotes no time or attention or labour, by himself or by servants or employees, to the working or conduct of the affairs of an enterprise does not carry on the business of such enterprise. He might, for instance, be only financially interested. To carry on business he must give attention, or perform labour, for the maintenance or furtherance of the undertaking, and devote time to the accomplishment of its objects. He must also be in such relation to the public that he may be held liable to others. The liabilities must be such as to be referable to the carrying on of the enterprise. Obligations assumed in connection with and for the purposes only of betterment of property owned by a man do not necessarily constitute him a person who carries on business. Finally, it is an essential element of carrying on business that the purpose of the engagement is for a livelihood or profit. If an enterprise is not conducted as a means to accomplish that object it does not come within the ordinary meaning of the term "business".

However their Lordships of the English Court of Appeal did not seem to hold the same view as Laidlaw JA *Rolls v. Miller* [1884] 27 Ch. D 71 concerned the lease of a house containing a covenant that the lessee should not use, exercise or carry on upon the premises any trade for business of any description whatsoever. The plaintiff's landlord sued on the covenant because the premises were being used as a Home for Working Girls. The girls received into the institution made small payments for their lodging but it appeared from the yearly accounts of other similar homes that no profits were really made but on the contrary there was always a heavy loss. The plaintiff obtained an injunction restraining the defendant from so using the premises. The trustee of the home then informed the plaintiff that they proposed to open a home for the admission of girls of the same description, in the same need of lodging, to be conducted in the same way, with the only exception that no payments were to be asked from them either for lodging or for board. That being so, by arrangement between the parties the question as to whether the defendant was carrying on "business" on the premises was brought before Pearson J for adjudication. The learned Judge found that notwithstanding there was to be no payment, the defendant's use of the premises constituted a business. The defendants appealed. Cotton LJ said at p. 85:

> I cannot read the two words "trade" and "business" as synonymous. There may be a great many businesses which are not trades, and although, in my opinion, receiving payment for what is done, using what you are doing as a means of getting payment with a view to profit - whether profit is actually obtained or not, must of course be immaterial - is certainly material in considering whether what was being done is, or is not, a business, yet, in my opinion, it is not essential that there should be payment in order to constitute a business. The mere fact that there is payment under certain circumstances, does not necessarily make a thing a business which if there was no payment would not be a business.

At p. 88 Lindley LJ said:

> When we look into the dictionaries as to the meaning of the word "business", I do not think they throw much light upon it. The word means almost anything which is an occupation, as distinguished from a pleasure - anything which is an occupation or duty which requires attention is a business - I do not think we can get much aid from the dictionary. We must look at the words in the ordinary sense, and we must look at the object of the covenant; and, looking at both, I have no hesitation in saying that this is clearly within the words and within the words and within the object of the covenant.

I respectfully adopt the reasoning of their Lordships in *Rolls v. Miller*. To my mind the appellant in carrying out the statutory obligations imposed upon it by the Ordinance was at all material times conducting a business within the meaning of s. 33(1) of the Act, a *fortiori* as the Ordinance itself in s. 60 speaks to business the appellant is required to transact in the execution of its duties followed by the testimony of the administrator to the effect that the main business of the appellant was to develop land and give it to the landless.

By way of its second ground the appellant argues that the work done by the respondents was not work undertaken by the appellant and that being the case, so the appellant says, the provisions of s. 33 do not apply. Counsel for the appellant relied on the case of *Skates v. Jones and Co*. [1910] 26 TLR 643. In that case the respondents who were two shopkeepers and the keeper of a billiard saloon, were minded to join together in running a skating rink. They bought an existing iron structure and made a contract with one Howard for its removal and re-erection. Skates, the applicant, while employed on this work by Howard was injured by accident and claimed workmen's compensation for his injuries. The respondent argued, and successfully so, that the work in which Skates was injured was not undertaken in the course of or for the purposes of the respondent's trade or business and that therefore it was not liable to pay compensation. Cozens-Hardy MR in the course of his judgment had this to say;

> It is not everything done in the interest of the trade or business which falls within this section. I shrink from saying that a cotton spinner who finds one of his boilers out of order and contracts with a boilermaker to replace it with a new boiler is liable to pay compensation to one of the workmen employed by the boilermaker. That work was required by the cotton spinner, but not "undertaken" by him. He never held himself out as a boilermaker. It was not part of his trade or business, to erect boilers, and the whole section has no application to him.

In *Hockley v. West London Timber and Joinery Company* [1914] 3 KB 1013 the business of the principals was manufacturing moulding of wood. They imported large quantities of timber and contracted with one Roberts, a deal porter, to stack it in their yard for the purpose of seasoning. Hockley who was employed by Roberts was injured by an accident while engaged in stacking the timber. There was evidence that the principals never stacked the wood themselves. The Court held that the work of stacking wood was not part of the work undertaken by the principals and that they were not liable to compensate the workman. At p. 1018 the Master of the Rolls, it was Lord Cozens-Hardy again, said;

> Now we have had our attention called to all the relevant authorities. It seems to me that there is not one of them which in any way supports the present appeal, or prevents us from saying that this stacking of timber, which, it was quite true, was the property of the respondents, and which, it is quite true, they required for the benefit of their business,

was not work undertaken by the principal within the meaning of this section. That being so, without going through the authorities again, which have been very carefully brought to our notice, I think the decision of the learned Judge was right. He has found as a fact - and there is ample evidence for it - that this was done for the purposes of the principal's trade, but he has found that it was not any part of the work undertaken by the principal. Those two conditions must co-exist in order to impose any liability under this section. It is not sufficient to say that it was for the purposes of the business; it must also be a part of the work undertaken by the principal.

In *Soon Peng Siong v. Sin Yuh Miaw* [1960] 26 MLJ 299, the appellant claimed that his business was to buy boats and break them up for scrap. He bought and sold scrap. He claimed never to have undertaken any work as a principal contractor but to give out contracts to others. The appellant had purchased the front bow of a vessel under a contract which required him to dismantle the vessel and purchase from the vendors whatever metals were dismantled therefrom. The appellant employed one Ang to dismantle and cut up the vessel. Ang engaged workmen one of whom was Sin who was injured in the course of dismantling and cutting the vessel. Sin claimed workmen's compensation from the appellant under s. 19(1) of the Singapore Workmen's Compensation Ordinance (Cap. 157) which is as follows:

Where any person (in this section referred to as 'the principal') in the course of or for the purpose of his trade or business contracts with any other person otherwise than as a tributer (in this section referred to as 'the contractor') for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him.

Chua J at p. 300 said:

In order that s. 19(1) shall apply there must first be work undertaken by the principal; secondly, the work must be in the course of, or for the purpose of his trade or business; and thirdly, he must contract with another person for the execution of the whole, or some part, of the work. Whether the work is undertaken by the principal is in each case a question of fact.

The learned Judge referred to *Hockley's* case and went on to say no doubt upon the evidence given in that case that it was part of the appellant's business to undertake to break up ships, without which he could not buy the scrap and carry on his business of a scrap dealer and it was immaterial that he found it more convenient in practice to subcontract for that part of the work, which he had contracted to do. The learned Judge held that the appellant undoubtedly entered into a contract to break up the whole ship, as was found by the arbitrator and it appeared clear that the appellant undertook the work.

On the evidence adduced before the learned director and by reference to the statutory objects of Felda as contained in the Act and as conceded by Counsel for the appellant in his written submission, all as above stated, it seems clear to me that the work done by the respondents under the contract, it was as the Administrator testified pollination work in connection with the land development, did constitute work undertaken by the appellant as principal, the work undertaken being work which under the Act the appellant was statutorily bound to carry out.

The third ground was that the director erred in obtaining the evidence of only a representative of the respondents, that there was before the director the evidence of 2 representatives only, that there was no evidence upon which the director was able to make his award of RM11,864 in favour of 94 persons, that salary books were not produced by the person maintaining them, that certain accounts did not meet to the requirements of s. 32 of the Evidence Act and the case of *Syarikat Jenka Sdn. Bhd. v. Abdul Rashid bin Harun* [1981] 1 MLJ 201 was prayed in aid of the appellant. A perusal of the Record of Proceedings before the director shows that the summons issued under s. 70 of the Act was commenced in the name of Mat Akhir bin Bakar and 172 "orang lagi". The record reads as Mat Akhir bin Bakar and 93 others claiming one month's wages from Felda. This Mat Akhir gave evidence saying that he was the elected spokesman of all the other complainants, that the complainants were all employed by Zahwa and that they wished to claim the February 1981 wages owed by the contractor from Felda as a principal under s. 33 of the Act and that the total claim amounted to RM15,641. The director was satisfied that complaint needed to be inquired into and directed the summons under s. 70 to be issued. The hearing commenced on 13 June 1981. The chief complainant and some of the workers were present. The contractor was also present as was a representative of Felda. This representative claimed to have no authority to admit or dispute the claim and as that was the case the director postponed the proceedings. At the resumed hearing which was on 6 July 1981 the record indicates that both parties were present. One Mat Akhir Nasir bin Zaini gave evidence claiming wages for himself. He also said that all the workers who worked under him as mandore were also not paid their wages. Mah bte Salleh the mandore working for the contractor at Keratong 9 claimed wages for herself. She also said that the other workers working in Keratong 9 were not paid the wages for February 1981. The 3rd person to give evidence was the contractor himself who conceded the claims of the respondents. He confessed that he paid the workers their wages for the month of January 1981 but was still owing them the February 1981 wages, because he did not have any money from Felda to make payment. He said that all in he owed a sum of RM15,641.50 to the workers in Keratong 1 and Keratong 9. The record indicates that all the workers had offered themselves for cross-examination by the defendant who did not wish to examine the other complainants. Thereafter the case for the complainants was closed. The assistant administrator in Felda then gave evidence as above stated. There is not the slightest suggestion in the Record of Proceedings that Felda at any time except in this appeal complained about the representation, or lack of it, of the respondents in the proceedings before the director. In the face of the admission of the claim by the defaulting contractor without any comment from Felda and the failure of Felda to take up the offer of all the workers for cross-examination but on the contrary expressing no wish to examine the other complainants, the complaint on this ground by Felda at this stage is to my mind wholly untenable.

The director ordered the appellant to pay the Assistant Director of Labour Segamat on behalf of Mat Akhir bin Bakar and 93 others the sum of RM11,864, setting in a list the names, identity card numbers and amounts payable in respect of each of the 94 workers amounting to RM11,864.

The appellant's complaint that the respondents had not proved their claim by having recourse to salary books and compliance with s. 32 of the Evidence Act appeared to me to be baseless in view of the clear admission of liability made by the contractor in the presence of the appellant's representative who made no objection thereto.

There were other grounds of appeal namely that the learned director decided the case on moral grounds, failed to explain the basis of his computation of the wage claims by the respondents and erred in law and in fact in making his findings. None of these grounds was argued before me. They did not appear to have any merit in any event.

The appellant having failed on all its grounds the appeal is dismissed with costs to be taxed.

Also found at [1991] 1 CLJ 349